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Nos. 04-1203 and 04-1236

In The
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner

v.

STATE OF GEORGIA, *et al.*

TONY GOODMAN,
Petitioner

v.

STATE OF GEORGIA, *et al.*

On Writs Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

STATEMENT OF FORMER PRESIDENT GEORGE H.W. BUSH AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

C. BOYDEN GRAY
A. STEPHEN HUT, JR.*
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M STREET, N.W.
WASHINGTON, D.C. 20037
(202) 663-6000
**Counsel of Record*

Counsel for Amicus Curiae
Former President George H.W. Bush

INTEREST OF *AMICUS CURIAE*[1]

As the President who pressed for the enactment of the Americans with Disabilities Act ("ADA") and signed it into law, I have a direct and personal interest in the defense of the ADA and the preservation of the important safeguards it provides to disabled Americans. This brief is filed on the broad issue of whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 to 12165, is a proper exercise of Congress's power under Section 5 of the 14th Amendment.

STATEMENT

On July 26, 1990, I had the privilege and honor of signing into law the ADA, comprehensive civil rights legislation intended to signal the end to unjustified segregation and exclusion of persons with disabilities from mainstream American life. *See Statement on Signing the Americans with Disabilities Act of 1990*, 2 Pub. Papers 1070, 1071 (July 26, 1990) (*"ADA Signing Statement"*). With the signing of the ADA, every man, woman, and child with a disability could pass through once-closed doors into a bright new era of equality, independence, and freedom. *See Remarks on Signing the Americans with Disabilities Act of 1990*, 2 Pub. Papers 1067, 1068 (July 26, 1990) (*"ADA Signing Remarks"*).

July 26, 1990 was a landmark occasion for me and for all Americans because, with the signing of the ADA, our country made an unequivocal statement to the world that Americans will not accept, will not excuse, and will not tolerate discrimination against persons with disabilities. *See ADA Signing Remarks* at 1069. The ADA works because it embodies what must be at the heart of all civil rights

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[1] Letters from the parties consenting to the filing of this brief have been filed with the Clerk of this Court, pursuant to Supreme Court Rule 37.3(a). No counsel for a party authored this brief in whole or in part, and no person or entity, other than the *amicus curiae* or its counsel, made a monetary contribution to the preparation or submission of this brief.

struggles: the spirit of inclusiveness, the devotion to individual rights, and equal opportunity. *See Remarks Commemorating the First Anniversary of the Signing of the Americans with Disabilities Act of 1990*, 2 Pub. Papers 963, 964 (July 26, 1991). It ensures that no disabled American will ever again be deprived of the basic guarantee of life, liberty, and the pursuit of happiness. *See ADA Signing Remarks* at 1068.

The ADA was enacted to address discrimination against persons with disabilities that permeated our society, including discrimination by public agencies in the delivery of public services. *See ADA Signing Statement* at 1070; *Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong. 808-09, 815-17 (1989) (prepared statement of Hon. Richard L. Thornburgh, Attorney General of the United States) (*"Thornburgh Senate Statement"*); *Americans with Disabilities Act of 1990: Hearings on H.R. 2273 Before the House Comm. on the Judiciary and the Subcomm. on Civil and Constitutional Rights*, 101st Cong. 198-99, 206-07 (1989) (prepared statement of Attorney General Thornburgh) (*"Thornburgh House Statement"*).

In 1986, I personally accepted, on behalf of President Reagan, a report from the National Council on Disability ("NCD") entitled "Toward Independence." NCD is a congressionally established Council. All 15 members of the Council at that time had been appointed by President Reagan. *See ADA Signing Statement* at 1070.

The report recommended enactment of comprehensive legislation to ban discrimination against persons with disabilities. *See id.* Specifically, NCD found that historically society has tended to segregate and isolate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.

NCD also found that discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

Further, NCD found that unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, or religion, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination. The NCD findings, among others, are incorporated in Section 2 of the ADA, 42 U.S.C. Section 12101.

My decision to embrace the ADA was based on two key factors. First, the comprehensive character of the legislation was a significant factor. *See ADA Signing Statement* at 1070. Given the pervasive nature of discrimination faced by individuals with disabilities and the wide range of barriers faced by such individuals in both private and public services, it was critical that the legislation be comprehensive and cover both public and private entities. *See Thornburgh Senate Statement*; *Thornburgh House Statement*. It would be a travesty indeed to ban discrimination by private entities and condone it by public entities, the very entities that should lead by example.

My Administration recognized that then-existing civil rights laws were inadequate. For example, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, only covered recipients of federal assistance. It did not cover services provided by public agencies that did not receive federal aid.

Thus, Section 504 left broad areas of disability discrimination untouched or inadequately addressed. Many persons with disabilities in this nation still lived in an intolerable state of isolation and dependence. In 1990, despite the existence of laws such as Section 504 of the Rehabilitation Act, persons with disabilities were still too often shut out of the economic and social mainstream of

American life. The unreasonable failure to eliminate attitudinal, architectural, and communication barriers in employment, transportation, public accommodations, public services, and telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit in a meaningful way from the richness of American society. *See ADA Signing Statement* at 1070; *Thornburgh Senate Statement* at 809; *Thornburgh House Statement* at 198-99.

In the 20 years preceding the enactment of the ADA, civil rights legislation protecting disabled persons had been enacted in a piecemeal fashion. Thus, federal laws prior to the ADA were like a patchwork quilt in need of repair. There were holes in the fabric, serious gaps in coverage that left persons with disabilities without adequate civil rights protections. To be effective in addressing the pervasive discrimination by public agencies, among others, the ADA needed to be cohesive, coordinated, and comprehensive. *See Thornburgh Senate Statement* at 812; *Thornburgh House Statement* at 201.

Second, the ADA was modeled on existing federal civil rights laws prohibiting discrimination on the basis of disability. These laws, such as Section 504, have proven to provide the proper balance between the rights of persons with disabilities and the legitimate concerns of states. The ADA also used as its model the panoply of civil rights laws prohibiting discrimination on the basis of race, color, national origin, religion, and sex. *See Thornburgh Senate Statement* at 810, 813-15, 818; *Thornburgh House Statement* at 201-03.

In conclusion, I recognize that no single piece of legislation can alone change longstanding perception or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process, however, is to increase contact between and among people with disabilities and their nondisabled peers. And an essential component of that effort was the enactment of a comprehensive law that promotes the integration of people

with disabilities into all aspects of America life. This goal cannot be accomplished without Title II's ban on discrimination in all state programs and activities. *See Thornburgh Senate Statement* at 819; *Thornburgh House Statement* at 212.

CONCLUSION

For the reasons set forth above and in petitioners' briefs, the judgment of the court of appeals should be reversed.

Respectfully submitted,

C. BOYDEN GRAY
A. STEPHEN HUT, JR.*
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M STREET, N.W.
WASHINGTON, D.C. 20037
(202) 663-6000
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